IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 5TH DECEMBER 2006 / 14TH AGRAHAYANA 1928

WP(C).No. 32304 of 2006(U)

PETITIONER:

SRI.R.PRASAD
(MEMBER & PERSON-IN-CHARGE), M/S. LEKSHMI TRADERS,
PUTHENPURACKAL, ERUMAKUZHI, NOORANAD.

BY ADV. SRI.P.BALAKRISHNAN (E)
SRI.K.C.KIRAN

RESPONDENT:

THE DEPUTY COMMISSIONER OF INCOME TAX,
CIRCLE I, KOLLAM.

BY SRI.GEORGE K. GEORGE, SC, GOVT. OF INDIA(TAXES).

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION

ON 05/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

THOTTATHIL B. RADHAKRISHNAN, J.

= =

WP(C).No.32304 OF 2006-U

= =

Dated this the 5th day of December, 2006.

JUDGMENT

Heard the learned counsel for the petitioner and the learned Standing Counsel, Government of India(Taxes).

2. Petitioner challenges Exts.P5 and P7.

3. On a proceedings initiated under Section 158BC, the petitioner successfully contested leading to Ext.P4 resulting in the knocking down of the said proceedings on ground of illegality on account of lack of proceedings under Section 158BD and for lack of proper notice to the competent authority following the mandate of Section 282(2)(c) of the Income Tax Act.

4. Following Ext.P4, the Department, in its wisdom, chose to initiate proceedings as per Ext.P5 invoking the provisions of Sections 158BC and 158BD by serving notice on the competent in the assessee. By Ext.P6, the assessee has pointed out before the authority that the assessment under Section 158BD read with Section 158BD is time barred and return is being filed in protest and they also reserve right to raise the said ground during the course of assessment and appeal. As of now, going by Ext.P7, the matter is listed for being heard by the competent officer in the

Department.

5. Whether Ext.P4 results in the disentitlement of the Department to initiate proceedings *de novo* and whether the proceedings initiated as per Ext.P5 are time barred or are liable to fall on any other count are matters which, in my firm view, do not require to be considered in a writ petition at this point of time since such issues are to be considered by the competent authority under the Act during the course of proceedings, the hearing of which is listed to tomorrow as per Ext.P7.

In the aforesaid circumstances, this writ petition is dismissed, however, clarifying that all legitimate objections of the assessee, including the effect of Ext.P4, will be considered by the competent authority before finalising the proceedings on the basis of Ext.P5.

Sd/-
THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

-true copy-

P.S. To Judge.